



City of Norman, OK

Municipal Building
Council Chambers
201 West Gray
Norman, OK 73069

Master

File Number: R-1617-36

File ID: R-1617-36

Type: Resolution

Status: Consent Item

Version: 1

Reference: Item 16

In Control: City Council

Department: Legal Department

Cost:

File Created: 06/22/2016

File Name: Opposing the Passage of SQ777 Prohibiting
Oklahoma Legislature from Passing Laws Abridging
Agriculture Technology and Livestock and Ranching
Practices

Final Action:

Title: RESOLUTION R-1617-36: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, PROVIDING ESSENTIAL INFORMATION TO THE CITIZENS OF NORMAN CONCERNING STATE QUESTION 777 (SQ 777), THE PROPOSED AMENDMENT TO THE OKLAHOMA CONSTITUTION, WHICH IS PLANNED FOR A STATEWIDE VOTE ON THE TUESDAY, NOVEMBER 8, 2016, STATE GENERAL ELECTION BALLOT; INFORMING CITY VOTERS OF THE POTENTIAL ADVERSE EFFECTS OF SQ 777 ON THE ABILITY OF THE CITY OF NORMAN TO REGULATE LAND USE ACTIVITIES AND TO ENACT OTHER ORDINANCES AND REGULATIONS WITHIN THE CITY FOR THE PROTECTION OF THE HEALTH, SAFETY, AND WELFARE OF ITS CITIZENS; AND URGING ALL REGISTERED VOTERS WITHIN NORMAN, BEFORE CASTING THEIR VOTES ON SQ 777, TO CAREFULLY STUDY AND CONSIDER ALL THE POTENTIAL ADVERSE EFFECTS OF SQ 777 ON THE HEALTH, SAFETY, AND WELFARE OF NORMAN RESIDENTS.

Notes: ACTION NEEDED: Motion to adopt or reject Resolution R-1617-36.

ACTION TAKEN: _____

Agenda Date: 10/11/2016

Agenda Number: 16

Attachments: R-1617-36, SQ777 News Release 2016

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Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:

Text of Legislative File R-1617-36

Body

BACKGROUND: The Oklahoma Legislature passed HJR 1012, on April 30, 2015, which authorized a state wide vote amending Article II of the Oklahoma Constitution. The proposed amendment, known as State Question 777 (SQ 777), will be on the ballot on November 8, 2016. State Question 777 guarantees the right of farmers and ranchers to engage in farming and ranching practices while prohibiting the State Legislature from passing any law which would abridge the rights of farmers and ranchers to employ agricultural technology and

livestock production and ranching practices without a compelling state interest for doing so. The proposed amendment reads as follows:

To protect agriculture as a vital sector of Oklahoma's economy, which provides food, energy, health benefits, and security and is the foundation and stabilizing force of Oklahoma's economy, the rights of citizens and lawful residents of Oklahoma to engage in farming and ranching shall be forever guaranteed in this state. The Legislature shall pass no law which abridges the right of citizens and lawful residents of Oklahoma to employ agricultural technology and livestock production and ranching practices without a compelling state reason.

Nothing in this section shall be construed to modify any provision of common law or statutes relating to trespass, eminent domain, dominance of mineral interests, easements, rights of way or any other property rights. Nothing in this section shall be construed to modify or affect any statute or ordinance enacted by the Legislature or any political subdivision prior to December 1, 2014.

This State Question is currently opposed by the Oklahoma Municipal League, and a Press Release is attached detailing OML's opposition. OML has asked its member cities to approve Resolutions urging citizens to vote 'No' on SQ 777 in November. To date, the cities of Edmond, Midwest City, Choctaw, and Oklahoma City have passed resolutions on this subject.

DISCUSSION: Several Councilmembers have expressed interest in adopting a Resolution on this topic. City staff has researched SQ 777 and the legality of City Council taking a position opposing it. Title 26, Section 16-119 of the Oklahoma Statutes states:

Any official in this state who shall direct or authorize the expenditure of any public funds under his care, except as specifically authorized by law, to be used either in support of, or in opposition to, any measure which is being referred to a vote of the people by means of the initiative or referendum, or which citizens of this state are attempting to have referred to a vote of the people by the initiative or referendum, shall be deemed guilty of a misdemeanor, and the office held by such party shall be judged vacant and shall be filled in the manner prescribed by law.

Because SQ 777 was referred by the Oklahoma Legislature for placement on the ballot, rather than being the subject of a referendum or initiative, there is an argument that the City Council would not violate 26 O.S. § 16-119 were Council to approve a resolution calling for Norman residents to vote against SQ 777. However, a 1991 Attorney General Opinion seems to indicate that because public funds are trust funds, and as such are sacred, they should be used only for the operation of the government. 1991 OK AG 27. In addition, Oklahoma State Senator Pittman filed a request for an opinion with the Attorney General's Office on September 15, 2016 after questions were raised about the legality of the actions of the cities of Edmond, Oklahoma City, Choctaw, and Midwest City. There is some case law reported in California courts that could be argued to allow a City Council, by Resolution, to take a position on a pending State Question in that State, but those opinions would be only considered secondary authority without a precedential effect in Oklahoma courts dealing with Oklahoma laws.

For those reasons, the proposed Resolution, R-1617-36 has been drafted taking a more conservative approach of stopping short of asking Norman residents to vote against SQ 777 and instead provides information to citizens about the City Council's concerns with SQ 777 and asks voters to carefully study the adverse effects that the approval of SQ 777 could have on the City of Norman.

Resolution R-1617-36 expresses concerns that the adoption of SQ 777 could impact the City's ability to regulate land use and zoning; to protect the health safety and welfare of its citizens; and to provide access to clean, high-quality drinking water. Because SQ 777 would provide special consideration for the farming industry, any action of the City of Norman construed by the farming industry as abridging their rights to farm

could result in extensive and expensive litigation against the City of Norman merely because it is attempting to safeguard the health, safety and welfare of its residents.

Placing a special consideration in the Oklahoma Constitution for the farming industry could also set a precedent for allowing similar special considerations for any and all industries and practices across Oklahoma. In addition, SQ 777 provides that this special consideration is guaranteed 'forever,' which precludes consideration of any unforeseen practices, treatments, or chemicals, on the obligations and ability of the State of Oklahoma and the City of Norman to provide to their residents an ample quantity of high-quality water at a reasonable rate and manageable expense.

RECOMMENDATION: In light of the Council's interest in adopting a Resolution opposing SQ 777 and the importance of balancing that interest with the restrictions on the use of public funds for opposing ballot measures, the City Attorney's Office recommends adoption of the attached Resolution R-1617-36 stating Council's concern with SQ 777 due to its potential negative impact on the City of Norman and urging all registered voters within the City of Norman to carefully study and consider all the potential adverse effects of SQ 777 on the health, safety, and welfare of Norman residents. Legal Staff believes this approach strongly communicates Council's concerns that align with OML materials and actions taken by other cities, but also provides City Council members voting for the Resolution with protection against an allegation that such a vote might violate 26 O.S. § 16-119 by spending public funds in opposition to a matter submitted for votes consideration on a state-wide ballot question.

The Oklahoma Municipal League will be available at the October 11, 2016 Council Conference to present information on SQ 777 with the Resolution scheduled for consideration on the Council agenda that same evening.